

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

AVERYL CLEVELAND McDANIELS

PETITIONER

VERSUS

CIVIL ACTION NO. 5:05cv159DCB-JCS

HARLEY LAPPIN, et al.

RESPONDENTS

OPINION AND ORDER

On October 3, 2005, the petitioner filed a petition for habeas relief. An order was entered on November 22, 2005, directing the petitioner to file a written response on or before December 13, 2005. The order was mailed to the petitioner at his last known address. The envelope containing the order to respond was returned by the postal service with a notation "Undeliverable" and filed in this civil action on December 13, 2005. The petitioner had been warned previously that failure to comply with an order of this court or failure to notify this court of a change of address could result in the dismissal of his civil action. Even though it has been more than 25 days from the date of the deadline, the petitioner has failed to respond or to comply with this order or to communicate otherwise with this court.

It is apparent from the petitioner's failure to communicate with this court that he lacks interest in pursuing this claim. This court has the authority to dismiss an action for the petitioner's failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure and under its inherent authority to dismiss the action sua sponte. See Link v. Wabash Railroad, 370 U.S. 626 (1962); McCullough v. Lynaugh, 835 F.2d 1126 (5th Cir. 1988).

The court must be able to clear its calendars of cases that remain dormant because of the inaction or dilatoriness of the parties seeking relief, so as to achieve the orderly and expeditious

disposition of cases. Such a sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the court. Link, supra, 370 U.S. at 630.

Since the respondents have never been called upon to respond to the petitioner's pleading, and have never appeared in this action, and since the court has never considered the merits of petitioner's claims, the court's order of dismissal should provide that dismissal is without prejudice. Shaw v. Estelle, 542 F.2d 954 (5th Cir. 1976).

A final judgment in accordance with this opinion and order will be entered.

This the 13<sup>th</sup> day of January, 2006.

S/DAVID BRAMLETTE  
UNITED STATES DISTRICT JUDGE